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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/214,022	12/23/1998	ROLF LASSON	TP1192-US	6097

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TETRA PAK US INTELLECTUAL PROPERTY DEPARTMENT  
TETRA PAK INC.  
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VERNON HILLS, IL 60061

EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/06/2003

27

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-27

**Office Action Summary**

Application No.

09/214,022

Applicant(s)

LASSON, ROLF

Examiner

Alicia Chevalier

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 17-30 is/are pending in the application.
- 4a) Of the above claim(s) 19-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-17 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **RESPONSE TO AMENDMENT**

### ***REJECTIONS REPEATED***

1. The 35 U.S.C. § 103 rejection of claims 14, 16, 27, 28, and 30 over Zinn (2,558,918) in view of Applicant's specification in the Background art is repeated for reasons previously of record in paper #25, pages 2-4, paragraph #4.

Zinn discloses a carton well adapted to hold fine grain or liquid material (col. 1, lines 16-19). The lined carton comprising a cardboard blank adhesively attached to a liner except at regions adjacent to the crease lines (col. 1, line 41 to col. 2, line 4). The lined carton is provided with a plurality of crease lines (figure 1).

Since the crease lines are not provided with adhesive the bond strength of the crease line region is less than the bond strength for the non-creased regions which are provided with adhesive. This permits the liner to separate from the cardboard blank at the corners when the carton is folded (figure 3).

Zinn fails to disclose that the cardboard blank and liner are coextensive with one another. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the layers coextensive. One of ordinary skill would be motivated to do so because it would make manufacturing the carton faster and insure the entire carton would be liner.

Zinn fails to disclose a liquid-tight coating disposed on the first layer outwardly of the second layer and a liquid tight coating disposed on the second layer outwardly of the first layer.

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Applicant discloses in their specification on page 1, lines 13-23, in the background art that a very large group of these disposable packages are produced from a laminated packaging material comprising a core layer of paper or paperboard and outer, liquid tight coatings of plastic on both sides of the core layer. The packaging laminate may also include additional layers of plastic and/or metal in order to impart to the packaging containers superior barrier properties against, for example, gases and light.

It would have been obvious to one of ordinary skill in the art at the time of the invention to add a liquid tight coating disposed on the first layer outwardly of the second layer and a liquid tight coating disposed on the second layer outwardly of the first layer as taught by the background art in Applicant's instant specification to Zinn's carton because it would increase to barrier properties against liquids leaking out of the carton when used for containing liquids.

Process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-

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process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation first and second layers are darkened are methods of production and therefore does not determine the patentability of the product itself.

2. The 35 U.S.C. § 103 rejections of claims 15 and 29 over Zinn (2,558,918) in view of Applicant's specification in the Background art further in view of Skjelby (4,206,867) is repeated for reasons previously of record in paper #25, pages 4-5, paragraph #5.

Zinn and background art of Applicant's specification disclose all the limitations of the instant claimed invention except that the fold regions are treated with an adhesion counter acting agent.

Skjelby discloses a coated paper board container and blank with a plurality of fold and non-fold regions and crease lines where some of the fold regions are treated with an adhesive (figure 10 and col. 7, lines 31-49). The adhesive coating may be made of any suitable material, such as wax based material, and permits easy separation between layers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the adhesive material of Skjelby to the crease lines of Zinn because it would help the liner more easily separate from the cardboard blank at the corners.

3. The 35 U.S.C. § 103 rejections of claim 17 over Zinn (2,558,918) in view of Applicant's specification in the Background art and further in view of Hecking (4,712,737) or Nagata (4,909,432) is repeated for reasons previously of record in paper #25, page 5, paragraph #6.

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Zinn and background art of Applicant's specification disclose all the limitations of the instant claimed invention except for the liner being made of aluminum or greaseproof paper.

Hecking discloses a cartoon comprising a paperboard lined aluminum foil (col. 2 line 58 to col. 3, line 15).

Nagata discloses a container comprising a thick paper lined with polyethylene, aluminum or the like (col. 1, lines 15-19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use polyethylene or aluminum liner as suggested by Hacking or Nagata depending on the type material to be contained by the cartoon, i.e. liquid or solid.

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

4. Applicant's arguments filed in paper #26 regarding the 35 U.S.C. § 103 rejection of record have been carefully considered but are deemed unpersuasive.

Applicant argues that the Examiner's has not put forth anything that shows that the first and second (liner and base) layers are coextensive, and only provides an overly broad conclusion. The Examiner's statement, "it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the layers coextensive. One of ordinary skill would be motivated to do so because it would make manufacturing the cartoon faster and insure the entire cartoon would be liner," is based on what is old in the art. As evidenced by Kucjenbecker (3,078,768), Stenger (2,837,261) and McGrady (2,218,246) having coextensive liner and base layers well known in the art.

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In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971). In the instant case the examiner has provided for evidence, as shown by the references cited above, that having the first and second (liner and base) layers coextensive is old in the art.

Applicant argues that the Examiner's position regarding the limitation non-scored crease line and first and second layer are darkened are methods of production is misplaced and that these are structural and/or functional limitations. First the limitation "non-scored crease lines" is no longer in the claims. It was deemed to be new matter in a previous office action office action, paper #18, filed December 27, 2001 and was removed from the claims in the response of paper #23, filed December 16, 2002. Second, the limitation the first and second layers are darkened are merely referring to a special process of laminating the two layers to on another, see specification page 7, line 24 to page 8, line. Applicant also to disclose other alternate methods for bonding the layers together, specification pages 7 and 8. As such, since it is merely referring the way the layers are bonded together it is considered a process limitation.

Applicant argues that based on the above remarks vis-à-vis of Zinn to provide the basis for an obviousness rejection of the pending claims, claims 15, 17, and 29 are allowable over the art of record for the same reasons that their base claims are allowable. The remarks regarding

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the deficiencies of the basis rejection over Zinn in view of the background information in Applicant's specification have already been addressed above.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

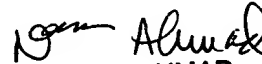
If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

7/29/03



  
NASSER AHMAD  
PRIMARY EXAMINER  
Acting SPE